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USACM Liquidating Trust

11  
12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF CALIFORNIA**  
14

15 USACM LIQUIDATING TRUST,  
16 Plaintiff,

17 vs.

18 ANTHONY MONACO, SUSAN  
19 MONACO, AND MONACO  
DIVERSIFIED CORPORATION,

20 Defendants.  
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CASE NO. ED CV 11-829 ABC (OPx)  
[Assigned to the Hon. Audrey B.  
Collins]

**NOTICE OF MOTION AND  
MOTION FOR ORDER  
APPOINTING RECEIVER AND  
ISSUANCE OF A PRELIMINARY  
INJUNCTION IN AID THEREOF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**[Declarations of Geoffrey L. Berman,  
Jacob J. Roberts and Theodore Lanes  
Submitted Concurrently Herewith]**

**Date: May 21, 2012**  
**Time: 10:00 a.m.**  
**Courtroom: 680**

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 21, 2012, at 10:00 a.m. or as soon  
 3 thereafter as counsel may be heard in Courtroom 680 of the above-entitled Court,  
 4 located at 255 E. Temple St., Los Angeles, California 90012, before the Honorable  
 5 Audrey B. Collins, Plaintiff USACM Liquidating Trust ("Trust"), by and through  
 6 its attorneys of record, Buchalter Nemer, a Professional Corporation, and Diamond,  
 7 McCarthy LLP, will and hereby does move the Court for:

- 8 1) **The Appointment of a Receiver** to take possession and control of all  
 9 assets directly or indirectly owned or controlled by Anthony or Susan  
 10 Monaco (the "Monaco Assets") to satisfy a \$5.5 million agreed  
 11 judgment executed by the Monacos in favor of the Trust (the "Agreed  
 12 Judgment"). The Agreed Judgment was entered by the United States  
 13 District Court for the District of Nevada on June 24, 2010, and was  
 14 registered by this court on September 16, 2010, and;
- 15 2) **A Preliminary Injunction** in aid of the receivership, ordering  
 16 Anthony and Susan Monaco, and their agents, attorneys and  
 17 representatives, not to:
- 18 a. Expend, disburse, remove, transfer, assign, sell, convey, devise,  
 19 pledge, mortgage, create a security interest in, encumber,  
 20 conceal or in any manner whatsoever deal in or dispose of the  
 21 whole or any portion of the Monaco Assets;
- 22 b. Interfere in any way, directly or indirectly, with the Receiver's  
 23 performance of his/her duties and responsibilities and the  
 24 exercise of his/her powers and/or doing any act which may  
 25 impair, defeat, divert, prevent or prejudice the preservation of  
 26 the Monaco Assets or the proceeds thereof;
- 27
- 28

- c. Commit or permit any waste of the Monaco Assets or any portion thereof, or suffer or commit or permit any act on the Monaco Assets or any part thereof in violation of law;
- d. Conceal or withhold any Monaco Assets, including any real property, indirect or beneficial ownership interests, or funds from the Receiver;
- e. Do any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Monaco Assets;
- f. Demand, collect, receive or spend any portion or proceeds of the Monaco Assets; and
- g. Fail to pay over to the Receiver any monies whenever received, presently in the possession, custody or control of the Monacos, their agents, representatives, servants, assigns and all those acting in concert therewith and that have been received as proceeds since the date hereof, including without limitation, rent, issues, proceeds, insurance payments, or profits from the Monaco Assets.

This Application is brought under California Civil Code sections 564(b)(3) and 708.610 *et seq.*, on the grounds that the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the Agreed Judgment. A receiver is both reasonable and necessary to satisfy the Agreed Judgment based on the following facts:

- The Monacos have failed to pay a penny of the *millions* of dollars currently owed on the Agreed Judgment (although approximately \$106,982.49 was involuntarily seized by the Trust from the Monacos' bank accounts).

- 1 • Despite repeated representations to the Trust that they had no assets,

2 Anthony Monaco testified during his judgment debtor's examination

3 on April 13, 2011 that between August 2010 and March 2011 he and

4 his wife Susan had received approximately \$1.4 million in cash for the

5 settlement of a promissory note in their favor and the sale of real

6 property (which the Monacos had concealed by holding it in the name

7 of "Eden Kai") in the Cayman Islands. None of those funds were

8 remitted to the Trust. In fact, Anthony Monaco testified that he had

9 spent his entire half of the approximately \$684,000 net receipts

10 "burn[ing]" most of it "going out and having a good time, eating

11 dinner, drinking, gambling, buying stuff that means nothing"<sup>1</sup> or had

12 transferred it to his lawyers—Lobb & Cliff LLP—ostensibly as a

13 retainer.
- 14 • Anthony Monaco also testified during his judgment debtor's

15 examination that he funneled his half of the \$684,000 net sales price

16 through Lobb & Cliff's bank account. Anthony Monaco's bank

17 records show that Lobb & Cliff then transferred funds to Anthony

18 Monaco in \$25,000 increments.
- 19 • The Monacos fraudulently transferred substantially all of their assets to

20 shell companies and trusts. These transfers are the subject of a

21 proceeding in California Superior Court, Riverside County, Case No.

22 RIC1110904.
- 23 • The Monacos continue to dissipate, conceal and fraudulently transfer

24 the Monaco assets.
- 25 • The Monacos are likely insolvent.

26

27

28 <sup>1</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 31:4 - 31:11 and 138:22 - 139:20.  
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1 It is for these reasons, and others asserted herein, that the Trust seeks the  
2 immediate appointment of Theodore Lanes as receiver to take possession, custody  
3 and control of the Monaco Assets. Without the immediate appointment of a  
4 receiver, the Trust faces irreparable harm from the Monacos continued concealment  
5 and dissipation of the Monaco Assets.

6 In addition, a Preliminary Injunction is necessary to enjoin the Monacos and  
7 their agents from interfering in any way with the duties of the Receiver or taking  
8 any adverse actions with respect to the Monaco Assets.

9 This Application is supported by the accompanying Memorandum of Points  
10 and Authorities and Declarations of Geoffrey L. Berman, Jacob J. Roberts and  
11 Theodore Lanes, as well as the complete files and pleadings of this action on file  
12 herein.

13  
14 DATED: April 2, 2012

BUCHALTER NEMER  
A Professional Corporation

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17 By:   
18 JEFFREY S. WRUBLE  
Counsel for USACM Liquidating Trust

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### STATEMENT OF FACTS

##### **A. The Trust's \$5.5 Million Agreed Judgment Against the Monacos**

From 2000 to 2007 Anthony Monaco ("Anthony Monaco") and Susan K. Monaco ("Sue Monaco," and together with Anthony Monaco, the "Monacos") received over \$23 million in unjust profit distributions from entities capitalized with funds from USA Commercial Mortgage Company ("USACM").<sup>1</sup> As a result of massive fraud perpetrated upon USACM by Thomas Hantges ("Hantges") and Joseph Milanowski ("Milanowski")—and from which the Monacos benefited—on April 13, 2006, USACM filed for bankruptcy.<sup>2</sup> The USACM Liquidating Trust ("Trust") was formed in an effort to recover assets from the perpetrators and participants in the fraud in order to compensate the investors and other creditors of USACM and its related entities.<sup>3</sup> Based on the Monacos' unjust enrichment, the Trust filed suit against them in April 2008 ("Original Action").<sup>4</sup> The Original Action was resolved with the entry of a \$5.5 million settlement and agreed judgment ("Agreed Judgment") against the Monacos in favor of the Trust on June 25, 2010.<sup>5</sup> To date the Agreed Judgment remains outstanding.<sup>6</sup> The Agreed Judgment lacked a cash component due to the Monacos' consistent representations to the Trust that they had no liquid assets.

##### **B. The Monacos' Post-Judgment Asset Concealment**

In stark contrast to their repeated claims of poverty during litigation, in the eight months following the entry of the Agreed Judgment the Monacos obtained

<sup>1</sup> Declaration of Geoffrey L. Berman in Support of Motion for the Appointment of a Receiver ("Berman Decl.") ¶ 5.

<sup>2</sup> *In re USA Commercial Mortgage Company, et al.*, U.S.B.C. Case No. 06-10725, United States Bankruptcy Court District of Nevada; Berman Decl. ¶ 5.

<sup>3</sup> Berman Decl. ¶ 6.

<sup>4</sup> Berman Decl. ¶ 6.

<sup>5</sup> Berman Decl. ¶ 6.

<sup>6</sup> Berman Decl. ¶ 9.



1 another \$1.368 million in cash.<sup>7</sup> None of these funds were remitted to the Trust.<sup>8</sup>  
 2 The Monacos received \$700,000 in August 2010, as settlement of a \$1 million  
 3 promissory note from the Brenden Noble Trust (the “Brenden Noble Note”)<sup>9</sup> and  
 4 another \$700,000 by causing an entity controlled by the Monacos, Eden Kai Ltd., a  
 5 Cayman corporation (“Eden Kai”), to sell its Cayman Island Property for \$700,000  
 6 (ultimately receiving \$668,000 after closing costs) on January 6, 2011.<sup>10</sup> As the  
 7 Monacos are currently divorcing, Anthony and Sue Monaco each received half of  
 8 the proceeds from both transactions.<sup>11</sup>

9 Anthony Monaco’s \$350,000 share of the proceeds from the settlement of the  
 10 Brenden Noble Note was wired from the Brenden Noble Trust to a bank account  
 11 maintained by Lobb & Cliff.<sup>12</sup> Lobb & Cliff later wired \$235,500 of these funds to  
 12 Alaska Horse’s bank account at JPMorgan Chase Bank, N.A. on August 23, 2010,  
 13 for use by Anthony Monaco.<sup>13</sup> Anthony Monaco’s \$334,000 share of the proceeds  
 14 from the sale of the Monacos’ Cayman Island property was also wired to a bank  
 15 account maintained by Lobb & Cliff,<sup>14</sup> which later wired a portion of these funds to  
 16 (1) Alaska Horse’s bank account at JPMorgan Chase Bank, N.A. for use by  
 17 Anthony Monaco (approximately \$40,000), (2) an account at BBVA in Anthony  
 18 Monaco’s name opened on February 14, 2011 (approximately \$75,000), and (3) an  
 19 account at California Bank & Trust in his name opened on February 14, 2011  
 20 (\$75,000 in three \$25,000 transfers on February 15, 2011, February 25, 2011, and  
 21 March 3, 2011, respectively).<sup>15</sup>

22 <sup>7</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 28:20 - 31:4; 60:22 - 62:6.

23 <sup>8</sup> Berman Decl., ¶ 9.

24 <sup>9</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 60:22 - 62:6.

25 <sup>10</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 28:20 - 31:4.

26 <sup>11</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 12:2 - 12:9; 61:13 - 61:16.

27 <sup>12</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 71:3 - 73:11.

28 <sup>13</sup> Roberts Decl., Ex. 14 (Alaska Horse Chase Bank Statement) at page 4; Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 30:4 - 30:13.

<sup>14</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 30:4 - 31:4.

<sup>15</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 34:13 - 37:17; Ex. 15 (California Bank & Trust Account Statements).

1 On September 30, 2010, the Trust propounded post-judgment document  
 2 requests and subpoenas on the Monacos and Lobb & Cliff. Among other things, the  
 3 requests sought production of information regarding any trusts the Monacos had  
 4 created since January 1, 2000.<sup>16</sup> Neither the Monacos nor Lobb & Cliff produced  
 5 any responsive documents or a privilege log.<sup>17</sup> Both Anthony and Sue Monaco  
 6 objected to the Trust's requests as being unduly burdensome and violative the  
 7 privacy interests and rights of third parties in addition to being subject to a claim of  
 8 privilege.<sup>18</sup>

9 In February and March, 2011 the Trust seized by bank levy approximately  
 10 \$106,982.49 located in three of Anthony Monaco's bank accounts.<sup>19</sup> These were  
 11 the first and only funds the Trust recovered from the Monacos in satisfaction of the  
 12 Agreed Judgment. As of April 13, 2011, Anthony Monaco had wasted all of the  
 13 approximately \$577,017.51 referenced above (\$334,000 [Eden Kai proceeds] plus  
 14 \$350,000 [Brenden Noble Trust Note proceeds] = \$684,000 minus \$106,982.49  
 15 [seized by the Trust]), "burn[ing]," most of it "going out and having a goodtime,  
 16 eating dinner, drinking, gambling, buying stuff that means nothing."<sup>20</sup> Monaco also  
 17  
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22 <sup>16</sup> Roberts Decl., ¶ 28.

23 <sup>17</sup> Roberts Decl., ¶ 28.

24 <sup>18</sup> Roberts Decl., ¶ 28. As the Court requested clarification from the United States District Court for Nevada that this  
 25 Court could properly rule upon matters relating to the enforcement of the Agreed Judgment, the Trust could not take  
 26 further action relating to the discovery or the Judgment until the United States District Court for Nevada ruled on the  
 27 Trust's application for clarification of the Agreed Judgment. On December 7, 2011, that Court entered its order  
 28 clarifying that this Court does indeed have the power and authority to rule upon matters relating to the enforcement  
 of the Agreed Judgment. On January 31, 2012, this Court entered its order lifting the stay it had imposed staying all  
 action in this matter.

<sup>19</sup> Roberts Decl., ¶ 25; Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam at 31:6-7)

<sup>20</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 31:4 - 31:11 and 138:22 - 139:20.  
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1 transferred an unspecified amount to Lobb & Cliff LLP, his counsel, as a  
 2 “retainer.”<sup>21</sup>

### 3 **C. The Monacos’ Fraudulently Transfer Their Assets**

4 In addition to concealing and dissipating assets post-judgment, the Monacos  
 5 fraudulently transferred substantially all of their assets to shell companies and trusts  
 6 after learning of their expected liability to the Trust.

7 By April 13, 2006, USACM had filed for bankruptcy protection and the  
 8 USACM empire run by Hantges and Milanowski had collapsed. In response to  
 9 these events, the Monacos retained Lobb & Cliff LLP to assist them in transferring  
 10 their assets out of the reach of their USACM-related creditors.<sup>22</sup> During spring and  
 11 summer 2007, Lobb & Cliff assisted the Monacos in fraudulently transferring five  
 12 properties to Alaska Horse LLC,<sup>23</sup> an entity wholly-owned by the Monacos and  
 13 created by Lobb & Cliff partner J. Mark Lobb in April 2007.<sup>24</sup> The five properties  
 14 had been purchased by the Monacos for \$6.1 million in cash and were transferred to  
 15 Alaska Horse for no consideration.<sup>25</sup> Lobb & Cliff then assisted the Monacos in  
 16 transferring another \$7.3 million to trusts the law firm created for them.<sup>26</sup>  
 17 Additionally, in August 2007, the Monacos used \$1.3 million of their personal  
 18 funds to purchase a parcel of real property in the Cayman Islands, the deed for  
 19 which was placed in the name of Eden Kai.<sup>27</sup> These \$14.7 million of transferred  
 20 assets represented substantially all of the Monacos’ assets at the time.<sup>28</sup> All had  
 21

22 <sup>21</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 31:4 - 31:11; 63:21 and 63:23.

23 <sup>22</sup> Roberts Decl. ¶¶ 8 - 18; Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 164:19 -165:6 and 154:17-156:18; Roberts Decl., Exs. 2 - 5 (Alaska Horse formation documents).

24 <sup>23</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 39:20 - 48:21; 50:8 - 56:15, 56:16 - 58:15, and 68:10 - 69:20; Roberts Decl., Exs. 6 - 11 (Deeds transferring properties to Alaska Horse).

25 <sup>24</sup> Roberts Decl., Ex. 2 - 5 (Alaska Horse formation documents).

26 <sup>25</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 45:20 - 48:21; 50:8 - 50:24; 54:21 - 55:15; 56:16 - 57:21; 59:14 - 60:4; 68:10 - 70:10.

27 <sup>26</sup> Roberts Decl., Ex. 13 (Monaco Balance Sheet dated October 31, 2007).

28 <sup>27</sup> Roberts Decl. ¶¶ 19 & 20; Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor’s Exam) at 24:21 - 27:10; Roberts Decl., Ex. 12 (Eden Kai Transfer of Land).

<sup>28</sup> Roberts Decl., Ex. 13 (Monaco Balance Sheet dated October 31, 2007).

1 been obtained by the Monacos solely through Hantges' and Milanowski's looting  
2 of USACM.<sup>29</sup>

3 These transfers are currently the subject of a proceeding in California  
4 Superior Court, Riverside County, Case No. RIC1110904.

## 5 II.

### 6 LEGAL ARGUMENT

#### 7 **A. Appointment Of A Receiver Is Proper In This Action**

8 The Ninth Circuit has held that federal law, to the extent it is on point,  
9 governs the appointment of receivers in federal court. Rule 69(a) of the Federal  
10 Rules of Civil Procedure governs the execution of final judgments and states that a  
11 "money judgment is enforced by a writ of execution ... [and] [t]he procedure on  
12 execution—and in proceedings supplementary to and in aid of judgment or  
13 execution—must accord with the procedure of the state where the court is located,  
14 but a federal statute governs to the extent it applies."<sup>30</sup>

15 Rule 66 of the Federal Rules of Civil Procedure governs the appointment of  
16 receivers. The Ninth Circuit has held that because "[t]he federal rules, including  
17 Rule 66, qualify as federal statutes under Rule 69(a) [,] ... Rule 66 prevails over any  
18 state law to the extent it applies."<sup>31</sup> However, when the federal statute is a general  
19 procedural rule, specific state statutes addressing the particular procedure at issue  
20 apply.<sup>32</sup> Therefore, "state law has been applied under Rule 69(a) to appointment of  
21 receivers, when such actions are undertaken in aid of executing a judgment."<sup>33</sup>  
22 Because the Federal Rules do not specifically address the issue of the appointment  
23 of a receiver in aid of executing a judgment, the Court should look to California

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25 <sup>29</sup> Berman Decl. ¶15.

26 <sup>30</sup> Federal Rules of Civil Procedure 69(a)(1).

27 <sup>31</sup> *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696, 701 (9th Cir.2010) (internal citations omitted).

28 <sup>32</sup> See *id.* at 701-703.

<sup>33</sup> *Joe Hand Promotions, Inc. v. Saddeldin*, 2011 WL 1806919, at \*1 (E.D. Cal. May 10, 2011) (citing *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696, 700 (9th Cir.2010)).  
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1 law—which does specifically address the issue—to determine whether the Trust is  
2 entitled to have such a receiver appointed.

3 Section 564(b)(3) of the California Civil Code provides for the appointment  
4 of a receiver to aid in the enforcement of a judgment:

5 (b) A receiver may be appointed by the court in which an  
6 action or proceeding is pending, or by a judge thereof, in  
7 the following cases:

8 (3) After judgment, to carry the judgment into effect.

9 Similarly, Section 708.620 of the California Civil Code provides:

10 The court may appoint a receiver to enforce the judgment where the  
11 judgment creditor shows that, considering the interests of both the judgment  
12 creditor and the judgment debtor, the appointment of a receiver is a  
reasonable method to obtain the fair and orderly satisfaction of the judgment.

13 In so appointing a receiver to enforce a judgment, the provisions of the  
14 California Code of Civil procedure sections 564 *et seq.* govern the appointment,  
15 qualifications, powers, rights and duties of the receiver.<sup>34</sup> To the extent the  
16 Monacos have assets subject to levy that can either be turned over to the Trust or  
17 liquidated to satisfy the Agreed Judgment, the appointment of a receiver represents  
18 an efficient mechanism and is likely to result in value in excess of what could be  
19 recovered if the Agreed Judgment was enforced without the use of a receiver –  
20 particularly because the Monacos have demonstrated a propensity for concealing  
21 their assets in the names of trusts or entities with no obvious connection to the  
22 Monacos – both here and abroad.

23 Here, the appointment of a receiver represents a reasonable method to obtain  
24 a fair and orderly satisfaction of the judgments<sup>35</sup> -- especially given the fact that the  
25 Monacos fraudulently transferred substantially all of their assets pre-judgment and  
26

27 <sup>34</sup> California Code of Civil Procedure § 708.610.

<sup>35</sup> California Code of Civil Procedure § 708.620.

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1 have been actively concealing and dissipating their assets post-judgment,  
 2 apparently liquidating and spending the proceeds of assets purportedly held by  
 3 Alaska Trust or other Monaco controlled entities. Thus, the statutory requirements  
 4 for appointment of a receiver are met. Without the appointment of a receiver the  
 5 Trust will always be at least one step behind the Monacos – by the time the Trust  
 6 can take a judgment debtor examination or subpoena documents the Monacos will  
 7 have had time to transfer their assets.

8 Moreover, even if this Court determines that federal law governs the  
 9 appointment of a receiver to aid in the enforcement of the Agreed Judgment, both  
 10 federal and California law regarding the appointment of a receiver are substantially  
 11 similar and the facts of this case warrant appointment under either standard. The  
 12 federal standard is articulated in *Canada Life Assurance Co. v. LaPeter*<sup>36</sup> where the  
 13 Ninth Circuit held that “the district court has broad discretion in appointing a  
 14 receiver, [and] it may consider a host of relevant factors, and [] no one factor is  
 15 dispositive.” Those factors can include:

16 (1) whether the party seeking the appointment has a valid claim; (2) whether  
 17 there is fraudulent conduct or the probability of fraudulent conduct, by the  
 18 defendant; (3) whether the property is in imminent danger of being lost, concealed,  
 19 injured, diminished in value, or squandered; (4) whether legal remedies are  
 20 inadequate; (5) whether the harm to plaintiff by denial of the appointment would  
 21 outweigh injury to the party opposing appointment; (6) the plaintiff’s probable  
 22 success in the action and the possibility of irreparable injury to plaintiff’s interest in  
 23 the property; and, (7) whether the plaintiff’s interests sought to be protected will in  
 24 fact be well-served by receivership.<sup>37</sup>

25  
 26  
 27 <sup>36</sup> 563 F.3d 837 (9th Cir. 2009).

<sup>37</sup> *Canada Life Assurance Co. v. LaPeter*, 563 F.3d 837, 844 (9th Cir. 2009) (internal citations omitted).  
 BN 10775823V9



As set out in detail in the accompanying Declarations of Geoffrey L. Berman and Jacob J. Roberts, a receiver is both reasonable and necessary to satisfy the Agreed Judgment based on the following facts:

- The Monacos have failed to pay a penny of the *millions* of dollars currently owed on the Agreed Judgment (although approximately \$106,982.49 was involuntarily seized by the Trust from the Monacos' bank accounts).
- Despite repeated representations to the Trust that they had no assets, Anthony Monaco testified during his judgment debtor's examination that between August 2010 and March 2011 he and his wife Susan had received approximately \$1.4 million in cash for the settlement of a promissory note in their favor and the sale of the "Eden Kai" property in the Cayman Islands. None of those funds were remitted the Trust.<sup>38</sup> In fact, Anthony Monaco testified that he had spent his entire half of the approximately \$684,000 net receipts "burn[ing]" most of it "going out and having a goodtime, eating dinner, drinking, gambling, buying stuff that means nothing"<sup>39</sup> or had transferred it to his lawyers—Lobb & Cliff LLP—ostensibly as a retainer.<sup>40</sup>
- Anthony Monaco also testified during his judgment debtor's examination that he funneled his half of the \$684,000 net sales price share through Lobb & Cliff's bank account. Anthony Monaco's bank records show that Lobb & Cliff then transferred funds to Anthony Monaco in \$25,000 increments.<sup>41</sup>

<sup>38</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 28:20 - 31:4; 60:22 - 62:6.

<sup>39</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 31:4 - 31:11 and 138:22 - 139:20.

<sup>40</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 31:4 - 31:11; 63:21 and 63:23.

<sup>41</sup> Roberts Decl., Ex. 1 (A. Monaco Judgment Debtor's Exam) at 30:4 - 31:4, 34:13 - 37:17; Ex. 14 (Alaska Horse Chase Bank Statement) at page 4; Ex. 15 (California Bank & Trust Account Statements).

- 1 • The Monacos fraudulently transferred substantially all of their assets to
- 2 shell companies and trusts. These transfers are the subject of a
- 3 proceeding in California Superior Court, Riverside County, Case No.
- 4 RIC1110904.
- 5 • The Monacos continue to dissipate, conceal, and fraudulently transfer
- 6 their assets.
- 7 • The Monacos are likely insolvent.

8 **B. This Court Has Jurisdiction to Appoint a Receiver in this Matter**

9 On September 16, 2010, the Trust registered the Agreed Judgment in this  
 10 Court in accordance with 28 U.S.C.A. § 1963. This provision serves to simplify and  
 11 facilitate collection on valid judgments. Specifically, 28 U.S.C.A. § 1963 provides  
 12 that:

13 A judgment in an action for the recovery of money or  
 14 property entered in any court of appeals, district court,  
 15 bankruptcy court, or in the Court of International Trade  
 16 may be registered by filing a certified copy of the  
 17 judgment in any other district or, with respect to the Court  
 18 of International Trade, in any judicial district, when the  
 19 judgment has become final by appeal or expiration of the  
 20 time for appeal or when ordered by the court that entered  
 the judgment for good cause shown. Such a judgment  
 entered in favor of the United States may be so registered  
 any time after judgment is entered. A judgment so  
 registered shall have the same effect as a judgment of the  
 district court of the district where registered and may be  
 enforced in like manner.

21 As the Monacos and a significant portion of their assets are located within  
 22 this district, and because the District of Nevada has no jurisdiction over either  
 23 property or third parties located outside of Nevada, this Court is the appropriate  
 24 court for enforcing the Agreed Judgment for assets and parties located in California.  
 25 As noted at footnote 18, above, on December 7, 2011, the United States District  
 26 Court for Nevada entered its order clarifying that this Court does indeed have the



1 power and authority to rule upon matters relating to the enforcement of the Agreed  
2 Judgment.

3 Thus, the Trust's registration of the Agreed Judgment in this Court was and  
4 is both necessary and proper and the miscellaneous matter opened by that  
5 registration should remain open. Further, such proceeding confers upon this Court  
6 the power to appoint a receiver to facilitate the Trust's collection on the Agreed  
7 Judgment.

8 **C. Defendant Is Protected By the Filing of an Undertaking in the Amount**  
9 **of \$25,000.**

10 The Court should not require the Trust to post a bond for the preliminary  
11 injunction because Federal Rule of Bankruptcy Procedure 7065(c) waives such  
12 requirement for a bankruptcy trustee.<sup>42</sup> Code of Civil Procedure § 567 provides for  
13 the filing of an undertaking by the Receiver in an amount to be fixed by the Court.  
14 Plaintiff suggests that an undertaking in the amount of \$25,000 is reasonable under  
15 the circumstances of this case. Given the amount that is due and owing to Plaintiff  
16 related to the claimed amount of the Monaco Assets the Monacos clearly do not  
17 have any interest which needs to be protected.

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25 <sup>42</sup> *In re Hawkins*, Bankr. No. 06-03258, Adv. No. 07-80017, 2007 WL 1428619 at \*2 (Bankr. E.D. Wash. May 11,  
26 2007) (noting that the bond requirement is waived); *see also In re Oxford Homes, Inc.*, 180 B.R. 1, 14 & n.20 (Bankr.  
27 D. Me. 1995) (holding that a post-confirmation trustee qualified as a "trustee" that is exempt from posting a bond  
under Rule 7065(c)).

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III.

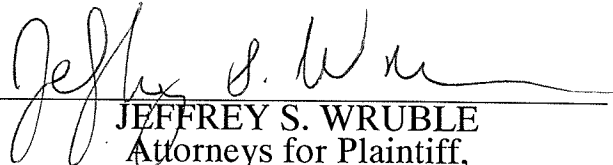
CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests that Theodore Lanes be appointed as Receiver and that a preliminary injunction in aid of the receivership issue concurrently with the appointment of a receiver as prayed for in the Notice of Motion. Plaintiff also requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED: April 2, 2012

BUCHALTER NEMER  
A Professional Corporation

By:   
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USACM Liquidating Trust